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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

10/783,356

02/20/2004

Jayesh C. Shah

H0004787 (4760)

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05/05/2006

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

✓

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|--|--|--|--|
| <p align="center"><b>Advisory Action</b><br/><b>Before the Filing of an Appeal Brief</b></p> | <p><b>Application No.</b><br/>10/783,356</p>       | <p><b>Applicant(s)</b><br/>SHAH ET AL.</p> |  |
|  | <p><b>Examiner</b><br/>Christopher P. Bruenjes</p> | <p><b>Art Unit</b><br/>1772</p>            |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***REPEATED REJECTIONS***

1. The 35 U.S.C. 103 rejections of claims 1-21, 27-33, 35-38, and 40 over Kim in view of Ikeda are repeated for the reasons set forth in the previous Office Action mailed March 30, 2006, Pages 4-9 Paragraph 7.

***ANSWERS TO APPLICANT'S ARGUMENTS***

2. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 1-21, 27-33, 35-38, and 40 over Kim in view of Ikeda have been fully considered but they are not persuasive.

In response to Applicant's argument that Kim fails to teach a styrenic block copolymer, it is admitted in the 35 U.S.C. 103 rejection that Kim fails to teach a tackifier and the claimed styrenic block copolymer. However, it is noted that only claims 13, 18, and 32 require the styrenic block copolymer, therefore for all the other claims Kim is only missing a tackifier.

In response to Applicant's argument that Kim and Ikeda have been improperly combined because there is no teaching or suggestion in either reference to combine the multilayer structures of Kim with the adhesive compositions described in Ikeda. However, Kim teaches an adhesive composition comprising

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ethylene/alpha-olefin copolymers is used to bond the fluoropolymer with the non-fluorinated polymer. Therefore, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to look to other art within the food and pharmaceutical packaging art when determining the best adhesive to be used. Furthermore, Ikeda specifically teaches that polyethylene based adhesives, in which the adhesive of Kim is, have a deficiency in bonding thermoplastic layers together during coextrusion lamination. Ikeda goes on to teach that the adhesive composition of Ikeda, which includes a styrenic block copolymer, ethylene/alpha-olefin copolymer and tackifier is an improved adhesive over an ethylene/alpha-olefin copolymer alone because it has better interlayer adhesive strength to numerous types of thermoplastic materials during coextrusion lamination (col.3, 1.1-22). Ikeda also teaches that coextrusion lamination is preferred in food and pharmaceutical packaging because it is quicker and therefore less expensive to manufacture because the lamination is created in one manufacturing step rather than multiple steps. In addition, by using the adhesive composition of Ikeda in place of the ethylene/alpha-olefin copolymer adhesives, such as the adhesive of Kim, the manufacture of the laminate also eliminates the preheating and/or after heating steps. Furthermore,

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although Ikeda fails to describe using the adhesive composition specifically with a fluoropolymer layer, Ikeda teaches that the adhesive composition is used with a multitude of different polymeric resins and that the adhesive composition is used in the same manner as ethylene/alpha-olefin copolymer adhesives. Therefore, although Ikeda fails to explicitly teach that the adhesive composition can be used with fluoropolymers, the fact that Ikeda teaches that the adhesive composition is used in place of ethylene/alpha-olefin copolymer adhesives and Kim teaches that ethylene/alpha-olefin copolymer adhesives are used to bond to fluoropolymers provides one of ordinary skill in the art with the understanding that there would be a reasonable expectation of success of using the adhesive composition of Ikeda to adhere fluoropolymer layers with other polymeric layers.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB  
May 3, 2006

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER

1772 5/3/06